

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

THIS DOCUMENT RELATES TO:

Lloyd Parker Jr. (0:17-cv-03573-JNE-DTS)
David Baker (0:17-cv-04375-JNE-DTS)
Mary Cunningham (0:17-cv-04512-JNE-DTS)
Stephanie Henderson (0:17-cv-04517-JNE-DTS)
Bennie Murphy (0:17-cv-04857- JNE-DTS)
Ethel McDonald (0:17-cv-04877- JNE-DTS)
Karen Potter (0:17-cv-04881-JNE-DTS)
Renate Edwards (0:17-cv-04891- JNE-DTS)
Todd Johnston (0:17-cv-05270- JNE-DTS)
Willard Billings (0:17-cv-05277- JNE-DTS)
Janice Taplin (0:17-cv-05370-JNE-DTS)
Anne Bresnock (0:17-cv-05371- JNE-DTS)
Bertha Swales (0:18-cv-00045- JNE-DTS)
Larry Homsher (0:18-cv-00757- JNE-DTS)

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

NOW COME Plaintiffs, in the above-captioned matters, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1463], and by and through the undersigned counsel submit this, Responses to Defendants' Motion to Dismiss, along with the Declaration of Daniel C. Burke, Esq. and would respectively show the Court the following:

Plaintiffs Bresnock, Potter, Taplin, Swales

Plaintiffs Anne Bresnock, Karen Potter, Janice Taplin, Bertha Swales were identified in Defendants' prior Motion to Dismiss. As per the Court's order dated August 16, 2018,

Plaintiffs have submitted amended PFSs. However, upon submission, Defendants asserted that the core deficiencies were not cured. Thereafter, on September 4, 2018, Plaintiffs re-submitted amended PFSs addressing the alleged core deficiencies. Despite Plaintiffs' diligent attempts to cure the alleged core deficiencies, Defendants submitted their Motion on September 6, 2018. Plaintiffs believe that they have addressed all alleged core deficiencies in the amended PFSs. Defendants' Motion is moot.

Plaintiff Parker

Plaintiff Lloyd Parker alleges that he developed a serious infection, which ultimately led to amputation, as a result of the use of a Bair Hugger Forced Air Warming Blanket during an orthopedic surgery. Plaintiff's PFS was served upon Defendants on December 18, 2017. Thereafter, Plaintiff submitted amended-PFSs on four separate occasions as recently as September 11, 2018 to cure the alleged core deficiencies. Plaintiff believes that the recently served amended-PFS addressed all alleged core deficiencies.

Plaintiff Baker

Plaintiff David Baker alleges that he developed a serious infection and was forced to undergo treatment of the same as a result the use of a Bair Hugger Forced Air Warming Blanket during an orthopedic surgery. Plaintiff's PFS was served upon Defendants on January 17, 2018. Thereafter, Plaintiff submitted amended-PFSs on two separate occasions on May 1, 2018 and on September 11, 2018 to cure the alleged core deficiencies. Plaintiff believes that the recently served amended-PFS addressed all alleged core deficiencies.

Plaintiff Cunningham

Plaintiff Mary Cunningham alleges that she developed a serious infection and was forced to undergo treatment of the same as a result the use of a Bair Hugger Forced Air

Warming Blanket during an orthopedic surgery. Plaintiff's PFS was served upon Defendants on January 17, 2018. Thereafter, Plaintiff submitted amended-PFSs on two separate occasions on May 1, 2018 and on September 11, 2018 to cure the alleged core deficiencies. Plaintiff believes that the recently served amended-PFS addressed all alleged core deficiencies.

Plaintiff Henderson

Plaintiff Stephanie Henderson alleges that she developed a serious infection and was forced to undergo treatment of the same as a result the use of a Bair Hugger Forced Air Warming Blanket during an orthopedic surgery. Plaintiff's PFS was served upon Defendants on February 12, 2018. Thereafter, Plaintiff submitted amended-PFSs on three separate occasions to cure the alleged core deficiencies. Plaintiff believes that the recently served amended-PFS addressed all alleged core deficiencies.

Plaintiff Murphy

Plaintiff Bennie Murphy alleges that she developed a serious infection and was forced to undergo treatment of the same as a result the use of a Bair Hugger Forced Air Warming Blanket during an orthopedic surgery. Plaintiff's PFS was served upon Defendants on February 20, 2018. Thereafter, Plaintiff submitted amended-PFSs on two separate occasions on May 1, 2018 and on September 11, 2018 to cure the alleged core deficiencies. Plaintiff believes that the recently served amended-PFS addressed all alleged core deficiencies.

Plaintiff McDonald

Plaintiff Ethel McDonald alleges that she developed a serious infection and was forced to undergo treatment of the same as a result the use of a Bair Hugger Forced Air Warming Blanket during an orthopedic surgery. Plaintiff's PFS was served upon Defendants on

January 24, 2018. Thereafter, Plaintiff submitted amended-PFSs on two separate occasions on May 1, 2018 and on September 11, 2018 to cure the alleged core deficiencies. Plaintiff believes that the recently served amended-PFS addressed all alleged core deficiencies.

Plaintiff Edwards

Plaintiff Renate Edwards alleges that she developed a serious infection and was forced to undergo treatment of the same as a result the use of a Bair Hugger Forced Air Warming Blanket during an orthopedic surgery. Plaintiff's PFS was served upon Defendants on March 21, 2018. Thereafter, Plaintiff submitted amended-PFSs on two separate occasions on August 7, 2018 and on September 11, 2018 to cure the alleged core deficiencies. Plaintiff believes that the recently served amended-PFS addressed all alleged core deficiencies and therefore, Defendants' Motion should be denied.

Plaintiff Johnston

Plaintiff Todd Johnston alleges that he developed a serious infection and was forced to undergo treatment of the same as a result the use of a Bair Hugger Forced Air Warming Blanket during an orthopedic surgery. Plaintiff's PFS was served upon Defendants on March 21, 2018. Thereafter, Plaintiff submitted amended-PFSs on two separate occasions on August 7, 2018 and on September 11, 2018 to cure the alleged core deficiencies. Plaintiff believes that the recently served amended-PFS addressed all alleged core deficiencies.

Plaintiff Billings

Plaintiff Willard Billings alleges that he developed a serious infection and was forced to undergo treatment of the same as a result the use of a Bair Hugger Forced Air Warming Blanket during an orthopedic surgery. Plaintiff's PFS was served upon Defendants on March 21, 2018. Thereafter, Plaintiff submitted amended-PFSs on two separate occasions on

August 7, 2018 and on September 11, 2018 to cure the alleged core deficiencies. Plaintiff believes that the recently served amended-PFS addressed all alleged core deficiencies.

Plaintiff Homsher

Plaintiff Larry Homsher alleges that he developed a serious infection, which ultimately led to amputation, as a result of the use of a Bair Hugger Forced Air Warming Blanket during an orthopedic surgery. Plaintiff is aware of his obligations set forth in the Pretrial Order No. 14 ("PTO 14"). Plaintiff returned his PFS on or around July 9, 2018 to the undersigned counsel but it was not completed. Thus, Plaintiff and the undersigned counsel's office worked diligently over the past several weeks to complete his PFS, which was served upon Defendants on September 12, 2018. Plaintiff believes that his PFS is without any core deficiencies.

For the foregoing reasons, Plaintiffs believe that Defendant's Motion is moot and therefore request that Defendant's Motion to Dismiss be denied.

DATED: September 12, 2018

Respectfully submitted,

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